

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 883 of 2000

with

SPECIAL CIVIL APPLICATION No 1194 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgement?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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SAHITYA SANGAM

Versus

STATE OF GUJARAT  
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Appearance:

MR UTPAL M. PANCHAL for the petitioners in SCA No.883 of  
2000 and MR NR SHAHANI for the petitioners in SCA No.1194  
of 2000.

MR ARUN D OZA, Ld.Govt.Pleader for respondents nos.1 and 2

MR AK CLERK for respondent nos.3 and 6

MR KETAN SHAH for respondent no.4

MR TUSHAR MEHTA for respondent no.5  
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Date of decision: 18/04/2000

COMMON ORAL JUDGEMENT

Both these Special Civil Applications are based on identical facts involving common questions of law and identical grounds of challenge seeking directions against the respondents in the matter of purchase of books for children and reference literature for the teachers of primary schools under the "Operation Black Board" Scheme. I, therefore, propose to decide both these petitions by this common judgment and order as under:

2. In the daily issue of a local newspaper in Gujarati named, "Sandesh" dated 21st May 1999, an advertisement was issued by the Education Officer (Planning), Primary Education, State of Gujarat, Gandhinagar, for purchase of reference literature for the teachers and literature books for children for the primary schools under the "Operation Black Board" Scheme. As per this advertisement, under the "Operation Black Board" Scheme, books worth about Rs.6 crore relating to literature for children and reference literature books for teachers were to be purchased for primary schools of the State under the District/Nagar Prathamik Shikshan Samities and therefore, the publishers, writers and distributors were invited to send to the office of the Director of Primary Education one copy each of the Gujarati medium books published/re-published on or after 1.1.1996 for the purpose of selection, within a period of ten days. The gist of the conditions as mentioned in this advertisement was as under:

- "1. Books containing rubber stamp/stamp disclosing revised price will not be taken into consideration for the purpose of selection.
2. Upon selection of the books, 35% discount on the basic price of the books will have to be given.
3. Upon selection of the books, same shall be required to be supplied at the concerned Taluks/Nagarpalika station at their own costs, payment whereof will be made by the concerned District/Nagar Prathamik Shikshan Samiti.
4. The books received beyond time stipulated

will not be accepted.

5. It will be incumbent upon every publisher to enclose copy of the consent letter of the writer as also the agreement entered into with the writer whereby he has given all the rights to the publishers. Without that, the books will not be considered to be worth selection.

6. The books of the regional writers will be given priority in the matter of selection.

7. Right of acceptance/rejection of the books will be with the 'Book Selection Committee.'

3. The petitioners in both these petitions, i.e. ten petitioners in Special Civil Application No.883 of 2000 and four petitioners in Special Civil Application No.1194 of 2000 have come with the case that they had sent their books in response to the aforesaid advertisement. According to the petitioners, the process for finalisation of the purchase of books in response to this advertisement was taken up in February 2000. As per the facts stated in Special Civil Application No. 883 of 2000, there were about 125 appliers and the respondents nos.1 and 2 chose the publishers/sellers of their favour. The petitioners have arrayed some of them as party respondents nos.3 to 6. It is alleged that these respondents and their sister concerns and connected publishers/sellers had participated in this process and they had given the offers with dummy names and the offers of respondents nos.3 to 6 and their associates have been accepted and the orders of books to the tune of 60% of the total purchase price of Rs.6 crore was likely to be issued shortly. According to the petitioners, the respondents nos.3, 4 and 5 and their associates were to get orders of Rs.1.25 crore each and the respondent no.6 was to be given the order of Rs.62 lakhs. It has also been stated that despite the specific mention in the advertisement that the books of the regional writers will be given preference, the translated version of the books written by non-regional writers published by the publishers outside the State had been selected, with the result, the writers and publishers of the Gujarat State are ignored. It has been alleged that a book titled as, "Israel" has been selected for this purchase which has no relevance of study for Std.I to VII, that the said book is selected only because it is written by the husband of

the present Education Minister, while the Education Minister is directly connected with the purchase of these books. In the end of para 10 of this Special Civil Application, the petitioners have gone to the extent of stating that even if this book was relevant for the children studying in Std.I to VII, this book ought not to have been selected as per the norms. It has been stated that although under Condition no.7, the 'Book Selection Committee' is empowered to select or refuse the book, but the Government did not declare the names of the members of the said Committee; that there must be transparency in the process and the action of the Government, the well-known authors on children literature, the well-known regional writers and the leading educationists should have been taken in the 'Book Selection Committee', but the Government had not followed these norms. It has been then stated that Gujarati literature and Gujarat writers have put a landmark and some of the Gujarati writers have received 'Gyan Pith' award which is the highest honour in the field of literature; that there are well-known Gujarati writers such as Raghuvir Chaudhary, Chandrakant Bakshi, Mohammad Manka, Gunvant Shah, Manubhai Pancholi, "Darshak" Bhagwatikumar Sharma and there are well-known Gujarati writers of children literature like Yashwant Mehta, Jivram Joshi, Hariprasad Vyas, Jyotish Jani, Yashwant Kadikar and many more, but the Government did not think it fit to take any of these writers in the 'Book Selection Committee.' It has been then stated that the said Selection Committee did not even think it desirable to select any book of the aforesaid writers and has thus insulted the aforesaid well-known writers of Gujarat State. The majority of the books which have been selected are written by non-regional authors and their translated versions have been selected and the same have been published by the publishers other than those of Gujarat State. It has also been stated that the publications of some of the petitioners have got great honour from the other States and their books are translated in other languages and the series of books have been selected by the National Book Trust of India and the leading English newspapers have received these books and yet the same do not find place in the books selected for purchase by the Selection Committee. It has also been alleged that the said scheme was announced by the Central Government and the same is in operation for more than five years and while implementing this scheme, the State Government ought not to have acted in such an arbitrary and illegal manner for the purpose of favouring anybody. It is then alleged in para 15 of this petition that by influence of the Partner of respondent no.3 Firm, Mr.Pravin Mohanbhai Mankadia, who is the sitting Member

of Legislative Assembly from Upleta, Dist. Rajkot, has worked favourably and has, along with his associate publishers, received an order to supply the books worth Rs.1.25 crore. It is also alleged that the respondents nos.4 and 5 and their associates are connected with the high ranking officers in the Education Department and they have also been selected for orders for purchase of books and that it is a case of nepotism writ large in the matter of selection of the books of the personnel and connected persons, may be by corrupt motives. It has also been stated that the advertisement issued in the name of Mr.V.P.Dhamecha, Education Officer (Planning) and said Mr.Dhamecha was transferred from this post and one Mr.B.K.Maru was appointed vice him, but within a short period, Mr.Maru was also transferred and Mr.B.D.Barot was appointed on the said post and immediately after his appointment, the deal was finalised and within a span of nine months, three officers have been changed and this itself smacks of malafide and arbitrary exercise of powers. It has been alleged that the dictionaries of five types have been selected for this purchase and the price varies from Rs.35/- to Rs.600/- and the order for the said different types of dictionaries are to be issued for a sum of Rs.1.30 crore.

4. On the basis of the amendment dated 22nd March 2000, while giving the names of the members of the Selection Committee for selecting the books under this scheme, it has been submitted that the following were the members of the Selection Committee:

- (1) Smt.Anandiben M. Patel,  
Minister of Education.
- (2) Shri P.V. Patel,  
Director of Primary Education.
- (3) Shri Nalin Pandit,  
Director of G.C.R.T.
- (4) Shri R.C. Raval,  
Director of Pathya Pustak Mandal.
- (5) Shri Mahendra Bhatt,  
Principal, Jilla Shikshan Talim Bhavan.
- (6) Shri Kaushik Mehta,  
Chairman, Municipal School Board.
- (7) Principal, Mohinaba Primary School.

(8) Principal, C.N. Vidyalaya.

(9) Sudhaben.

It has been submitted that out of these members, one was the Education Minister herself and the four members were bureaucrats; that the present Education Minister is connected with the Mohinaba Primary School and therefore, the Principal of the said school was also appointed as the member of the Selection Committee; that one Sudhaben was inducted without following proper procedure and without permission of the State of Gujarat; that no eminent author, eminent author of children literature or no educationist was taken as member of the Committee and majority of the bureaucrats and persons known to the Education Minister have been taken as members of the Selection Committee. This Selection Committee selected 68 books under the said Scheme as per the list of books contained in Annexure.C. It has also been alleged that the prices of the books quoted under the "Operation Black Board" Scheme which have been accepted are much more than that of the market price. By way of example, it was pointed out that the book named, 'Jhalar' written by one Shri Raghavji Madhad has been selected and the price of this book has been quoted as Rs.95/- whereas the market price of the said book is only Rs.43/-. It is also alleged that this book is not at all meant for the children of Std.I to VII. It has also been alleged that Shri Madhavji Madhad is serving in G.C.E.R.T. and Shri Nalin Pandit who is Jt. Director of G.C.E.R.T. was also a member of the Committee and while the aforesaid book is irrelevant for children, the author of the book has been obliged by selecting his book by the members of the Selection Committee. While the books of the eminent authors have not been selected, the books of the authors who have hardly one or two books like Shri Raghavji Madhad and Shri Mafatbhai Patel have been selected by the members of the Selection Committee. It has also been alleged that Navjivan Trust which is established by Mahatma Gandhi has published a dictionary - 'Shabdakosh' which is available at a very low price and yet it has not been selected and as against it, many costly books of private publishers have been selected which is clearly suggestive of malafides. In para 19 of the petition, it has been stated that the purchase of 36 titles of 'Amar Chitrakatha' at the cost of Rs.36/- each which is otherwise available in the market at Rs.12/- is a glaring example of arbitrary exercise to the prejudice of the State. It has also been alleged that the total purchase envisaged for purchase of these books is Rs.1.30 crore and that these books are written by non-regional authors

and translated into Gujarati and the same have also been published by non-regional publishers. It has been stated that Navjivan Trust is a pioneer in the field and the same was established by Mahatma Gandhi with a view to see that the book is made available at the lowest rates to the children so that even a poor child is not deprived of reading the book due to high price; the said Trust is purely working on Gandhian philosophy and is engaged in publishing wide range of Gujarati literature having wide range of children literature. Shri Jitendrabhai Desai who is the Managing Trustee of Navjivan Trust and who is also the President of Gujarat Pustak Prakashak and Vikreta Mandal refused to take part in this scheme because of the arbitrary approach of the Government and that it is the duty of the Government to invite such pioneer Gandhian Institute to contribute their valuable share to make the scheme a grand success. In para 22 of this petition, it has been stated that after receiving the list of books from these few publishers, the State Government has already taken a decision to purchase such books but the purchase orders are yet to be issued although the Government has issued letters calling upon them to deposit the requisite amount. It is stated that the respondents are acting in collusion with such few chosen publishers and the respondents have to be prevented from taking any steps which may ultimately result into fraud with public exchequer and clear discrimination of majority of the publishers.

5. On the basis of the aforesaid averments, the reliefs in Special Civil Application No. 883 of 2000 have been sought as under:

"26(A) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction restraining the Resp. Nos. 1 and 2 from making any purchase pursuant to the advertisement at Annex."A".

(B) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction directing the Resp. No.1 Government to form a fresh Selection Committee consisting of well-known Gujarati writers and authors of children stories and the educationalists and to take up the whole procedure for selection of books afresh."

6. The petitioners in Special Civil Application No.

1194 of 2000 have requested for re-constitution of the Selection Committee by including well-known authors of children literature and critics and for equitable distribution of selected books with a view to benefit the largest possible number of children belonging to Std.I to VII (Primary School) and have prayed for the following reliefs:

"10(A) Your Lordships may be pleased to direct Respondents Nos.1 and 2 to reconstitute the Selection Committee by including well known authors and critiques of literature and children's books and further be pleased to direct them to reconsider the whole issue of purchase of children's books under the Advertisement at Annexure."A", afresh, by adopting absolutely transparent, open and equitable procedures;

(B) Your Lordships may be pleased to lay guidelines for the purpose of forming the Selection Committee, distribution of orders of books among publishers and also by nominating a suitable Chairman for the present incidence."

7. It may be pointed out that Special Civil Application No.883 of 2000 was initially listed before the Division Bench (Court No.1) on 16th February, 2000, 21st February 2000, 1st March 2000 and thereafter on 8th March 2000. On 8th March 2000, the Division Bench recorded that the petition had been filed by competing publishers and therefore, it could not be treated as a Public Interest Litigation and the same may therefore, be listed before the appropriate single Bench and this is how the matter came up before this Bench from the Division Bench. On 22nd March 2000 the amendment as prayed for by the petitioners was allowed and the Rule was issued. In this Special Civil Application, besides the pleadings including the amendments and the documents as have been filed by the petitioners, there is an affidavit-in-reply dated 8th March 2000 filed by the respondent no.2 through the Education Officer (Planning) under the Directorate of Primary Education, and an affidavit-in-reply dated 8th March 2000 filed on behalf of the respondent no.5 along with the documents, an affidavit-in-reply dated 5th April 2000 filed on behalf of respondent no.6, an affidavit-in-reply dated 13th March 2000 along with the documents filed on behalf of respondent no.4 and an affidavit-in-reply dated 6th April

2000 filed on behalf of respondent no.3, a copy of the letter dated 11th June 1993 issued by the Government of India, Ministry of Human Resources Department, have been produced by the learned Govt.Pleader Mr.Arun D.Oza along with the list of books selected by the 'Book Selection Committee' under the "Operation Black Board" Scheme. Learned Govt. Pleader has also placed on record the proceedings of the Committee dated 24th July 1999, the Resolutions dated 8th October 1998 and 16th September 1999 with regard to the constitution of the Selection Committee.

8. Special Civil Application No.1194 of 2000 was filed subsequently and even this petition was also listed before the Division Bench (Court No.1) on 1st March 2000, 15th March 2000 and on 15th March 2000, the Division Bench directed that this matter only also be placed before the Single Bench. In this Special Civil Application, the Rule was issued on 5th April 2000 and the same was directed to be heard along with Special Civil Application No. 883 of 2000 as above. In this Special Civil Application, an affidavit-in-reply dated 6th April 2000 has been filed on behalf of the respondent no.2 along with the documents.

9. On the basis of the pleadings as aforesaid available in both these matters, the arguments have been addressed by both the sides. The first attack on behalf of the petitioners was against the constitution of the Selection Committee for selection of the books. There is no dispute between the parties that there are no Rules or any executive circulars so as to prescribe the qualification as to who should be the members of the Selection Committee. The Resolution dated 8th October 1998 shows that earlier, by Resolution dated 24th October 1996 passed by the Government of India in Education Department, a Committee had been constituted for the same scheme, i.e. "Operation Black Board" Scheme. The Director of Primary Education sent a letter dated 11th September 1998. Having read the earlier Resolution dated 24th October 1996 and the Director's letter dated 11th September 1998, the Committee as was constituted on 24th October 1996 was superseded and the new Committee for the selection of the books was constituted as per this Resolution dated 8th October 1998 which has been issued by an order in the name of the Governor of Gujarat. The Director of Primary Education is the Chairman of this Selection Committee and Shri Nalin Pandit, i.e. Jt. Director, Gujarat Council of Education, Research and Training is the Member Secretary, Director of Text Books Board, Smt.Kshamaben Shirishbhai Shah, Member, Gangaba

Kanya Vidyalay, Shri Kaushikbhai Mehta, Chairman of Ahmedabad Municipal Education Committee, Mrudulaben Desai, C.N.Primary School, Ambawadi, Ahmedabad, and Principal of District Education and Training, Gandhinagar are the other five members. As per this Resolution dated 8th October 1998, the Chairman of the Gujarat State Text Books Board has to be invited as a special invitee. It was made clear by the learned Govt. Pleader that the Education Minister is the Chairman of the Gujarat State Text Books Board and therefore, the Education Minister was there in the Committee as a special invitee in terms of the Resolution dated 8th October 1998. It was also made clear that as per this Resolution dated 8th October 1998, only eight members including the special invitee were to constitute the Selection Committee for the purchase of the books in question, but it was on 16th September 1999 that yet another Resolution was passed by the Govt. in the Education Department and as per this Resolution, keeping in view the request of the Director of Primary Education, one Smt. Sudhaben R. Mehta was also included in the Committee and thus in all, there were nine members in the Selection Committee including the special invitee, i.e. Chairman of the Gujarat State Text Books Board and the Director of the Primary Education, State of Gujarat as the Chairman of this Committee. It has been submitted that the personnel in this Committee are all related to the Education Department and the Education Minister is there because the Education Minister is the Ex-officio Chairman of the Gujarat State Text Books Board. The Education Minister was therefore there in this meeting as a special invitee by virtue of the position held by her as the Chairman of the Gujarat State Text Books Board because the Education Minister is the Ex-officio Chairman of the Gujarat State Text Books Board. Thus, the inclusion of the Education Minister in the Committee is by virtue of office held by her and the same could not be avoided. Besides this, it was also pointed out on the basis of the proceedings dated 24th July 1999 that the Education Minister did not remain present in each and every meeting of the Selection Committee and that she had remained present only in the meeting dated 6th July 1999 as a special invitee.

10. I find that it is not a case of the constitution of any statutory Selection Committee for the books in which any definite qualification or eligibility for membership or for member Secretary or for Chairman have been laid down nor I find that the Selection Committee is required to be of any particular member and thus it cannot be said that the constitution of the Selection Committee was unlawful in any manner. Who should be

there in the Selection Committee and who should not be there in the Selection Committee in such cases depends upon the choice of the Government. It is not meant to be said that there cannot be any better personnel, there may be more eminent and still more better personnel available to be included in the Selection Committee, but it is not for this Court to interfere with the constitution of the personnel of such Selection Committee for books. After all, it is found that the Selection Committee for these books had been constituted by a Government Resolution and the Director of Primary Education who is concerned with the primary education of the children in this State has throughout been associated and in such a situation, this Court cannot hold the constitution of the Committee to be illegal merely because the petitioners have pointed out that there could be still better personnel with more eminence available for inclusion in the Committee. There may be still more authors of greater eminence as has been pointed out by the petitioners in the body of their petitions, but that by alone will not render the constitution of this Selection Committee to be illegal and therefore the first contention raised on behalf of the petitioners with regard to the constitution of the Selection Committee cannot be sustained in the eye of law. The said contention is hereby rejected.

11. It was then argued that the selection of books in this case was not fair for two reasons. Firstly, the husband of the Education Minister was one of the beneficiaries in whose favour an order for books of Rs.67 lakhs has been placed and this is besides the fact that the book written by him namely, 'Israel' was not at all useful for the children upto Std.VII. Secondly, the respondent, i.e. Pravin Prakashan is a publisher and one of its partners is the sitting MLA and therefore, in order to benefit the publisher in which the sitting MLA is a partner has been chosen. Merely, because the Education Minister was a special invitee member in the Committee, it cannot be said that the book written by her husband could not be considered. Mr.Arun Oza, learned Govt. Pleader has pointed out that in the contents of book of Std.VII there is a Chapter on 'Israel' and even otherwise the book which has been written by Shri Mafatlal Patel, i.e. husband of the Education Minister is based on his visit to Israel and experience and the Selection Committee found it to be a useful book for the children and as a reference book for the teachers and if the book was otherwise useful, it could not be left out from the purchase merely because it was written by the husband of the Education Minister. It has also been clarified that in a Selection Committee of nine members

which was presided by the Director of Primary Education, the special invitee could not have been influenced the decision of the entire selection body and therefore, on this ground the selection of the books cannot be said to be unfair and it also cannot be said that any undue advantage has been given by selecting the book on 'Israel' which was written by Shri Mafatlal Patel who is the husband of the Education Minister. So far as the respondent no.3-Firm of which Shri Pravinbhai who is the sitting MLA is said to be a partner, it was clarified that this publisher had sent about 72 books out of which only eight books have been selected and the order was placed on 21st February 2000 for a sum of Rs.44.13 lakhs. It is submitted that the respondent no.3 is a publisher with the experience of 20 years in this branch and it is at Sr.No.43 on the Chart of the publishers who had applied in response to the advertisement and the eight books which have been selected on their merit have been found to be useful for the purpose for which the books are to be purchased under the scheme. Even if the facts on the basis of which these allegations have been alleged are taken to be correct, I do not find that the selection of the books on this basis can be said to be unfair. It is a matter of coincidence that the wife of the author Shri Mafatlal Patel happens to be the Education Minister and was a special invitee in the Selection Committee for the books by virtue of her being the Chairman of the Gujarat State Text Books Board and when it has also been clarified that she did not remain present in all the meetings of the Selection Committee and had remained present only in one of the meetings on 6th July 1999, it cannot be said that the selection of the books was unfair and that the order was passed to give any undue benefit. Similarly, with regard to the respondent no.3, it is again incidental that one of the partners of the respondent no.3 Firm is a sitting MLA. Out of the 72 books which were sent by respondent no.3, if eight books have been selected by the expert committee for the selection of books, the malafides or any element of unfairness cannot be attributed to the whole Committee merely because eight out of the 72 books have been selected for which the orders have been placed accordingly to the respondent no.3. I, therefore, do not find any element of unfairness in the selection of the books by the Committee as established in the facts of this case and it cannot be taken to be a case of favouritism either to the author Shri Mafatlal Patel or Shri Pravinbhai, MLA and it does not reflect the element of unfairness in the process of selection of the books.

12. It was then submitted by giving illustrations

that certain books which were available in the open market at a lower price have been decided to be purchased by the respondents nos.1 and 2 at a higher price than what was quoted and printed in the books. Reference in this connection was made to the following books:

- (1) Book named, 'Jhalar' written by Raghavji Madhad at item no.66 in the chart of the books selected by the Book Selection Committee under Operation Black Board scheme has been decided to be purchased at the rate of Rs.95/- (after 35% reduction) whereas the market price of this book is Rs.43/- only.
- (2) Book named, 'Kede Katari, Khabhe Dhaal', written by Kumarpal Desai at item no. 36 has been purchased at the price of Rs.54/- (after 35% reduction) whereas this book is available in the market at the rate of Rs.27/- only.
- (3) Book named, 'Apang Na Ojas' written by Kumarpal Desai at item no. 36 has also been purchased at Rs.75/- whereas its market price is Rs.40/- only.

On this aspect of the matter, it has been made clear that the books which were published or re-published on or after 1.1.1996 were only to be considered. The prices to which the reference has been made by the petitioners are the prices mentioned and printed in these books published earlier than 1996. The latest publication bears the prices as are mentioned in the chart at which the Government is seeking to purchase these books. In such cases, the old editions cannot be purchased and it is also not known as to whether the old editions are available in required number or not. The respondents nos.1 and 2 are going to purchase the books which are publications or revised editions after 1996 and in this regard it has also been said that the respondents have followed the norms as were followed by Rajaram Mohan Rai Library Foundation while purchasing the books and Rajaram Mohan Rai Library Foundation had also issued the advertisement in which the dates of 1.1.1996 had been fixed and only such books were sought to be purchased which were published only on or after 1.1.1996. It has been shown by producing these books that in the latest publication, the same market price has been mentioned at which it has been sought to be purchased by the Government. Therefore, it cannot be said that the

Government is purchasing these books at the rate more than the market price of these books.

13. It has been made clear that the respondent no.4 is in the field of publication for the last 75 years and it had sent about 121 books out of which only ten books have been selected and an order of Rs.41.20 lakhs was placed. With regard to respondent no.5 also, it has been clarified that the respondent no.5 is in the field of publication for the last 50 years and out of 136 books sent by it, only five books have been selected and an order for a sum of Rs.20.64 lakhs have been placed. With regard to respondent no.6, it has been clarified that it has been in the field of publication for more than seven decades and it had sent 95 books, out of which only nine books had been accepted and an order for Rs.46.17 lakhs has been placed. It was also submitted that out of the entire Gujarati literature, 60% of it has been published by the respondents nos.3 to 6 and out of the entire literature relating to children, 50% has been published by the respondents nos.3 to 6. It has been submitted that 90% of the writers whose books have been selected are regional writers. With regard to certain series books, i.e. 'Amarchitra Katha', it was submitted that they are available in the market at the rate of Rs.12/per copy and yet these series books have been purchased by the Government at the rate of Rs.35/- per copy. Learned Govt. Pleader clarified that these series books which are purchased by the Government at the rate of Rs.35/are of different publishers. These series books which are purchased by the Government are published by "Balvinod Prakashan" whereas the books which the petitioners are mentioning as series books, 'Amarchitra Katha' is of Inka Publications. The petitioners submitted that may be that they are of different publishers, yet the original source for both these series is India Book House and the contents are also the same and therefore, merely because they are of different publishers, should not have made any difference and the Government should have gone for the purchase of the series books, 'Amarchitra Katha' at the rate of Rs.12/- as published by Inka Publications rather than going to purchase the books of the series published by 'Balvinod Prakashan'. It has been submitted on behalf of the respondents that merely because the original source is the same, it cannot be said that the respondents were bound to purchase the series books of 'Inka Publications', their case is that the quality of the print, the paper, the binding etc. has also to be taken note of and if the quality of another publication is better, the Government may certainly purchase the books of the series books of the better quality

notwithstanding the same contents and on that basis, the selection of the books cannot be held to be illegal. It was also pointed out that 'Inka Publications' had never applied for the series books of 'Amarchitra Katha'.

14. On behalf of the respondents, on the question of malafides, the decisions in the case of State of M.P. and ors. v. Nandlal Jaiswal and ors., reported in AIR 1987 SC 251; M.Sankaranarayanan v. State of Karnataka and ors., reported in AIR 1993 SC 763; and Rajendra Roy v. Union of India and anr., AIR 1993 SC 1236 were cited and it was submitted that in the instant case, there are no such definite allegations of malafide which may vitiate the selection of the books.

15. I do find that in the instant case, no such allegations of malafides are there which can constitute the case of any malice either on facts or in law in the process of selection of books. After all, it is a case with regard to the purchase of books. This Court is not concerned as to whether the decision taken by the Books Selection Committee is right or wrong or whether it could have been still better than what the decision has been taken. This Court is only concerned with the question as to whether there is any illegality or any element of unfairness in the process of decision making. What is the decision is not and cannot be the concern of this Court in such cases when the Government has invited the books from the publications in the open market and has selected the books by an expert Committee. This Court has also no concern as to who should have been there in the Selection Committee and who should not have been there, because there are no definite rules in this regard and it is found that all the members of the Selection Committee for the books are in one way or the other related to the field of education. It is for the Government to choose as to who should be the person in the Committee and this Court cannot substitute its own choice at the instance of any of the parties either for the purpose of naming the personnel of the Committee or to constitute the Committee by still more eminent persons as was suggested by the learned Counsel for the petitioners nor this Court can substitute its own wisdom about the quality of the books or the utility of the books because it is for the Committee to consider as to which books can be more useful for the children as literature books or as reference books for teachers. I do not find that in the process of selection making in this case, the respondents nos.1 and 2 have flouted any of the principles as laid down by the Supreme Court in the case of Tata Cellular v. Union of India, reported in

(1994) 6 SCC 651 or in the case of Asia Foundation & Construction Ltd. v. Trafalgar House Construction (I) Ltd. & ors., reported in (1997) 1 SCC 738.

16. All said and done, I do find that in the instant case, the petitioners themselves had applied in response to the advertisement and merely because their books have not been selected, they cannot turnaround, take a somersault and challenge the constitution of the Selection Committee or the selection of books. They themselves had taken a chance before this very Selection Committee for getting their books selected. Merely because their books have not been selected, their grievance against the constitution of the selection or the fairness of the Selection Committee cannot be allowed to be questioned before this Court in view of the law laid down in the case of Om Prakash Shukla v. Akhilesh Kumar Shukla & ors., reported in AIR 1986 SC 1043 and in the case of Raunaq International Ltd. v. I.V.R. Construction Ltd. & ors., reported in AIR 1999 SC 393 and in the case of Air India Ltd. v. Cochin International Airport Ltd. & ors., reported in (2000) 2 SCC 617.

17. The arguments which have been raised on behalf of the petitioners may be very attractive as a question of principle, but there must be independence in the process of selection, that best possible books must be selected or that there must be equitable distribution in the matter of placing the orders and that the amount of Rs.6 crore as sanctioned has not been well spent and that there could be better personnel and better experts, authors of great repute in the Book Selection Committee, but all these arguments however attractive, they may be on the face value are hardly sufficient in the facts of this case to hold either the constitution of the Committee or the process of the selection of books held by the Selection Committee to be unlawful and unjustified and there is no such gross illegality so as to warrant the holding of the process of the selection to be bad. There may always be scope for the selection of the personnel to be good, better or best, but it is for the executives in the Government to implement such schemes and to take decision in this regard but this Court cannot substitute its opinion nor can it give any direction to the respondents in such matters unless it is found that some illegality has crept in in the process of selection making or in the process of constituting the Committee. Even the Central Government's communication dated 11th June 1993 which forms the basic document for this scheme does not spell out any qualifications or eligibility with

regard to the members and I do not find that there is any violation of this circular. To say that some particular literature should have been selected is rather strange and is not at all a matter to be considered by this Court. It depends upon the policy of the Government and the Government has to take a decision in this regard. Unless such policy decision is contrary to public policy or illegal in any manner or goes contrary to the security or interest of the nation or it seeks to threaten the basic tenets on which our fountain source of law is based, this Court cannot have any say in the matter to set aside such selection of books.

18. The upshot of the aforesaid discussion is that this Court does not find it to be a fit case for any interference with the decision taken by the respondents nos.1 and 2. Both these Special Civil Applications have no merit. The same are hereby dismissed. The Rule is hereby discharged in both the cases. In the facts and circumstances of these cases, no order as to costs.

(M.R. Calla, J.)

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